

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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EARL THURSTON,

Civil No. 11-144 (DWF/JSM)

Plaintiff,

v.

**REPORT AND RECOMMENDATION**

Warden B.R. JETT,  
Captain WHITE,  
Lieutenant HANSEN,  
Lieutenant NAUGLE,  
S.I.A. MILLER, and  
D.H.O. B. AUTERSON,

Defendants.

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This matter has been referred to this Court for a Report and Recommendation under 28 U.S.C. § 636 and Local Rule 72.1. For the reasons discussed below, it is recommended that this case be summarily dismissed without prejudice.

Plaintiff, a federal prison inmate, commenced this action more than a year ago, by filing a complaint seeking relief for alleged violations of his federal constitutional rights. (Docket No. 1.) The long and convoluted procedural history of this case was summarized in the Court's last preceding order, (Order dated January 11, 2012, [Docket No. 25], and that history will not be repeated here. Suffice it to say that even though this case has been pending for more than a year, Plaintiff still has not filed a legally sufficient complaint. The Court's last preceding order, (Docket No. 25), offered Plaintiff substantial pleading guidance, and afforded him one final chance to re-plead. That order also expressly informed Plaintiff that if he did not file a new and acceptable "Third Amended Complaint" by February 29, 2012, he would be deemed to have abandoned this action, and it would be recommended that this action be summarily dismissed pursuant to Fed. R. Civ. P. 41(b).

The deadline for filing a Third Amended Complaint has now passed, and Plaintiff has

not submitted any new pleading. Indeed, Plaintiff has not communicated with the Court at all since the last preceding order was entered in this case. Plaintiff has been given extraordinarily generous opportunities to file a sufficient pleading in this case, but he simply has not done so. Therefore, in accordance with the Court's last preceding order in this case, it is now recommended that Plaintiff be deemed to have abandoned this action, and that the action be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b). See Henderson v. Renaissance Grand Hotel, 267 Fed.Appx. 496, 497 (8<sup>th</sup> Cir. 2008) (unpublished opinion) ("[a] district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order"); Link v. Wabash Railroad Co., 370 U.S. 626, 630-31 (1962) (recognizing that a federal court has the inherent authority to "manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases").

Based upon the above, and upon all the records and proceedings herein,

IT IS HEREBY RECOMMENDED that this action be **DISMISSED WITHOUT PREJUDICE**.

Dated: March 30, 2012

*s/ Janie S. Mayeron*  
 JANIE S. MAYERON  
 United States Magistrate Judge

Under D.Minn. LR 72.2(b) any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties by **April 13, 2012**, a writing which specifically identifies those portions of this Report to which objections are made and the basis of those objections. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. A party may respond to the objecting party's brief within 14 days after service thereof. All briefs filed under this rule shall be limited to 3500 words. A judge shall make a de novo determination of those portions of the Report to which objection is made. This Report and Recommendation does not constitute an order or judgment of the District Court, and it is therefore not appealable

directly to the Circuit Court of Appeals.